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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 558

EDWARD VANCE,
Petitioner,

vs.

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (ASCAP); BROADCAST MUSIC, INCORPORATED (BMI); SHAPIRO, BERNSTEIN & COMPANY, INCORPORATED; EDWIN H. MORRIS & COMPANY, INCORPORATED; DUCHESS MUSIC CORPORATION; MAIN STREET SONGS, INCORPORATED; JENKINS MUSIC COMPANY; DECCA DISTRIBUTING CORPORATION; DECCA RECORDS, INCORPORATED; CHANCELLOR RECORDS, INCORPORATED; KMBC RADIO AND TELEVISION BROADCASTING STATION; WHB RADIO BROADCASTING STATION; KATZ DRUG COMPANY; DICK HOWARD; BOB ELLSWORTH; RUSS MORGAN; CURT MASSEY; ARBIE GIBSON; JIMMIE HODGES,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

EDWARD VANCE,
North River & Kentucky,
IN. 1-5415,
Independence, Missouri,
Petitioner.

E. L. MENDENHALL, INC., 1108 Oak Street, Kansas City 6, Mo., HArrison 1-3039

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List of Cases Which Involve All Related Subjects of This Cause

Advertising Exchange v. *Bayless Drug Store*, D.C. N.Y. 1942, 3 F.R.D. 178 (R. p. 70).

Berry v. *Hoffman*, 1937, 189 Atl. 516, 125 Pa. Super. 261 (R. p. 72).

Caruthers v. *R.K.O. Radio Pictures*, D.C. N.Y. 1937, 20 Fed. 418.

Chamberlain v. *Feldman*, 1949, 89 N.E.2d 863, 300 N.Y. 135 (R. p. 72).

Clayton v. *Stone*, C.C. N.Y. 1829, Fed. Cas. No. 2, 872.

Greenbie v. *Noble*, D.C. N.Y. 1957, 151 F. Supp. 45.

Hartley Pen Co. v. *Lindy Pen Co.*, D.C. Cal. 1954, 16 F.R.D.

Lampert v. *Hollis Music, Inc.*, Sup. 1951, 109 N.Y.S.2d 319 (R. p. 71).

Lowe's, Inc., v. *Columbia Broadcasting System*, D.C. Cal. 1955, 131 F. Supp. 165, affirmed 239 F.2d 532,

Certiorari granted 77 S. Ct. 824, 353 U.S. 946, 1 L. Ed. 856.

Mazer v. *Stein*, Md. 1954, 74 S. Ct. 460, 347 U.S. 201, 98 L. Ed. 630, rehearing denied 74 S. Ct. 637, 347 U.S. 949, 98 L. Ed. 1096.

Mills Music Corp. v. *Cromwell Music*, D.C. N.Y. 1954, 126 F. Supp. 54.

Northern Music Corp. v. *King Records Distributing Co.*, D.C. N.Y. 1952, 107 F. Supp., 105 F. Supp. 393.

Photo-Drama Motion Picture Co. v. *Social Uplift Film Corporation*, N.Y. 1915, 220 Fed. 448 (R. p. 70).

Press Pub. Co. v. *Monroe*, N.Y. 1896, 73 Fed. 196, 19 C.C.A. 429, error dismissed 17 S. Ct. 40, 164 U.S. 105, 41 L. Ed. 367.

R. C. A. Mfg. Co. v. *Whiteman*, C.C.A. N.Y. 1940, 114 F.2d 86. Certiorari denied 61 S. Ct. 393, 311 U.S. 712, 85 L. Ed. 463 (R. p. 71).

Robbins Music Corp. v. *Wienstock*, D.C. N.Y. 1952, 107 F. Supp. 102.

U. S. v. *American Bell Telephone Co.*, Mass. 1895, 16 S. Ct. 69, 159 U.S. 548, 40 L. Ed. 255 (R. p. 71).

Westway Theatre v. *Twentieth Century-Fox Film, Corporation*, D.C. M.D. 1940, 30 F. Supp. 830, affirmed 113 F.2d 932.

Textbooks

35 C.J.S., Sec. 4, Page 779.

Common Law copyright, 18 C.J.S., Sec. 2, Pages 138-139 (R. p. 69).

Copyright is purely statutory right, 18 C.J.S., Sec. 18, Page 161 (R. p. 18).

Duration, 18 C.J.S., Sec. 6, Page 140 (R. p. 69).

Equity Rules, 18 C.J.S., Sec. 144, Page 254 (R. p. 78).

In General, 18 C.J.S., Sec. 4, Page 139 (R. p. 68).

Literary property, 18 C.J.S., Sec. 3, Page 139 (R. p. 68).

Nature and form of action, 18 C.J.S., Sec. 145, Page 254 (R. p. 78).

Pages 245-246 as explained in *Lederer v. Rankin*, C.C. Ohio, 90 Fed. 449.

Publication without consent, 18 C.J.S. Sec. 13 (3), Page 157 (R. p. 69).

Purpose of the Statute, 18 C.J.S., Sec. 132, Notes 12, 13, 14, 15, 16.

Special Statutory Provisions, 18 C.J.S., Sec. 147, Page 255 (R. p. 71).

Statutory Damages, 18 C.J.S., Sec. 135 (c), Page 249 (R. p. 78).

Statutes

5th Amendment and Sec. 1 of 14th Amendment.

Article 1, Sec. 8, Clause 8, of the Constitution of the United States.

17 U.S.C.A., Sections 1, 2, 3, 101, 105, 112, 114, 115, 209, 210.

28 U.S.C.A., Sec. 1253, Page 26, June 25, 1948, c. 646, 62 Stat. 926.

28 U.S.C.A., Sec. 1254 (1), Page 42, June 25, 1948, c. 646, 62 Stat. 928.

28 U.S.C.A., Sec. 1291, Page 230, June 25, 1948, c. 646, 62 Stat. 929.

28 U.S.C.A., Sec. 1338 (a), Page 65, June 25, 1948, c. 646, 62 Stat. 931.

28 U.S.C.A., Sec. 1400 (a), Page 382, June 25, 1948, c. 646, 62 Stat. 936.

28 U.S.C.A., Sec. 2106, Page 82, June 25, 1948, c. 646, 62 Stat. 963.

28 U.S.C.A., Sec. 2403, Page 174, June 25, 1948, c. 646, 62 Stat. 971.

37 C.F.R., Sec. 201.2 (d) (2) (3), Pages 326-327, U.S.C.A., Title 17.

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OCTOBER TERM, 1959.

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AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (ASCAP); BROADCAST MUSIC, INCORPORATED (BMI); SHAPIRO, BERNSTEIN & COMPANY, INCORPORATED; EDWIN H. MORRIS & COMPANY, INCORPORATED; DUCHESS MUSIC CORPORATION; MAIN STREET SONGS, INCORPORATED; JENKINS MUSIC COMPANY; DECCA DISTRIBUTING CORPORATION; DECCA RECORDS, INCORPORATED; CHANCELLOR RECORDS, INCORPORATED; KMBC RADIO AND TELEVISION BROADCASTING STATION; WHB RADIO BROADCASTING STATION; KATZ DRUG COMPANY; DICK HOWARD; BOB ELLSWORTH; RUSS MORGAN; CURT MASSEY; ARBIE GIBSON; JIMMIE HODGES,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To The Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, Edward Vance, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in this cause.

OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Eighth Circuit is reproduced as Appendix A hereto.

The judgment of the United States Court of Appeals for the Eighth Circuit is reproduced as Appendix B hereto.

The Court Order of the District Court R. pp. 58-59 and pp. 3-4-5 of Court of Appeals opinion Appendix A.

JURISDICTION.

The judgment of the United States Court of Appeals was entered October 26, 1959, affirming the Court Order of the District Court entered May 6, 1959. The opinion of the Court of Appeals was entered October 26, 1959. An order issued upon notice of appeal was entered November 4, 1959, staying the mandate until December 4, 1959, for the purpose of petitioner to print and file this petition.

Jurisdiction of this Court is invoked under the provisions of Title 28, United States Code Annotated, Section 1254 (1). This claim is not dependent upon diversity of citizenship or the amount in controversy although there is more than ten thousand dollars over and above cost and interest in controversy. This claim arises under Federal questions strictly concerning copyrights which are title, validity, illegal procurement of four coyprights, infringement, enforcement of four copyrights, continuous illegal use of four copyrights with false markings on them and false markings on four songs, the demand of statutory damages and permanent injunction.

Jurisdiction of this Court is invoked under the provisions of Title 28, United States Code Annotated, Section

1253, because Section 3, Title 17, U.S.C.A., is repugnant to the Constitution of the United States rendering Section 2 null, rendering petitioner's common law literary property right inadequate. See Certificate of Unconstitutionality Exhibit 89, signed by Judge Knox.

Jurisdiction of this Court is invoked under the provisions of Title 28, United States Code Annotated, Section 2106. There are questions of Federal law that the District Court and the Court of Appeals should have determined, that this Court should determine or supervise the determination. Title to and validity of four copyrights and a Constitutional question.

Jurisdiction of this Court is invoked under the provisions of Title 28, United States Code Annotated, Section 2403. The United States or any agency, officer or employee thereof is not a party. The United States should be enjoined and restrained from enforcing Section 3, Title 17, U.S.C.A. The District Court Order affirmed by the Court of Appeals challenges and affects the validity of Sections 1, 2, 101, 105 and 112 of Title 17, U.S.C.A.

Jurisdiction of this Court is invoked under the provisions of Title 17, U.S.C.A., Section 114, entitled Review of Orders, Judgments or Decrees Act, July 30, 1947, c. 391, Section 1, 61 Stat. 652; Oct. 31, 1951, c. 655, Sec. 17, 65 Stat. 717.

QUESTIONS PRESENTED.

1. This claim presents substantial Federal questions of the modern Federal Law, an Act July 30, 1947, c. 391, 61 Stat. 652, Codified and enacted into positive law, Title 17 of the United States Code entitled "COPYRIGHTS."

2. Whether Congress by its Act Title 17, U.S.C.A., Sec. 1, pursuant to Article I, Sec. 8 and Clause 8, of the Constitution of the United States, has secured for authors an exclusive property right protecting an author's intangible and incorporeal rights against any unauthorized use or interference.

3. Whether The Library of Congress Copyright Office grants a copyright or merely makes a registration of copyright without any comparison, research or legal advice as to the merits of copyrights. 37 C.F.R., Sec. 201.2(d), (2), (3), U.S.C.A., Title 17, pp. 326-327.

4. Section 1 of Title 17, U.S.C.A., reads in part as follows—

Sec. 1. EXCLUSIVE RIGHTS AS TO COPYRIGHTED WORKS.

Any person entitled thereto, upon complying with the provisions of this title, shall have the exclusive right: (a) To print, reprint, publish, copy, and vend the copyrighted work; including all the other privileges exclusively numerated through (a) (b) (c) (d) to (e) paragraph of Sec. 1.

5. No time limit whatever is imposed upon the right of the person entitled to copyright to claim the same.

No person who does not comply with the provisions of Title 17, U.S.C., Sec. 1, and who is not entitled to copyright registration can do the things enumerated in paragraphs (a) to (e) in Sec. 1, no rights are secured at the time of registration or at the present time or in the future because the Statute means just what it says. Only the person entitled to copyright can do or continue to do what a valid copyright provides for.

6. It is the contention of your petitioner that the statutes of limitation do not apply to illegal procurement

or the wrongful registration of copyrights being continuously used each and every day with false markings on four copyrights and false markings on four songs registered for 28 years with the privilege to renew for 28 years more. That the continuous use in this instant cause is direct violation of Sections 1, 2, 3, 105 and 112, Title 17, U.S.C.A. See description of the invalid copyrights in Appendix C.

7. Whether an author's exclusive intangible and incorporeal rights inherent both in common law literary property right and statutory copyright are of indefinite or perpetual duration, continuing in the owner until abandoned or lost by a general publication. That publication without petitioner's consent in no way affects his common law right.

8. Whether the Statute, Section 1338 (a), U.S.C.A., invokes the United States District Court's original and exclusive jurisdiction over the subject matter of title to four copyrights, validity of four copyrights, illegal procurement of four copyrights, enforcement of four copyrights; illegal use of four illegal and invalid copyrights with false markings on the four copyrights and four songs, granting injunctions, service and enforcement operative pursuant to Sec. 112, Title 17, U.S.C.A.

9. Whether the statute, Title 28, U.S.C.A., Section 1400 (a), invokes the United States District Court's jurisdiction as a special venue statute over the person of defendants anywhere in the United States where defendants are licensed to do business and where defendants or their agents are doing business.

10. Whether Section 112 of Title 17, U.S.C.A., means just what it says about the court or judge having power to hold defendants in contempt before any United States

District Court anywhere in the United States granting injunctions, service and enforcement.

11. Whether Section 3, Title 17, U.S.C.A., is unconstitutional because of its construction being repugnant to the Constitution of the United States, enlarging the scope of copyrights in violation of Section 3, where the purported copyright owners, authors and publishers use rearrangement applications with entirely new songs that they acknowledged receipt of from Edward Vance the original composer, author and owner making false claims of protection on component parts in violation of 17, U.S.C and 37 Code Federal Regulation which forbids the use of a rearrangement application with entirely new material. See the description of invalid copyrights, Appendix C.

12. Whether Rule 81 (a) (1) of Federal Rules of Civil Procedure exempts Title 17, U.S.C.A., so that a copyright claim filed under Sections 1, 2, 3, 101, 105 and 112, can not be dismissed under Rule 12 (b) (1) and Rule 12 (b) (6) of Federal Rules of Civil Procedure without the Court going into the copyright records to determine the merits of copyrights and the jurisdiction of the court.

STATUTES AND REGULATIONS INVOLVED.

Statutes and Regulations are set out in Appendix D. Title 28, U.S.C.A., Sec. 1338 (a), p. 65; invokes the District Court's original and exclusive jurisdiction over the subject matter of copyrights. June 25, 1948, c. 646, 62 Stat. 931.

Title 28, U.S.C.A., Sec. 1400 (a), p. 382, invokes the District Court's Jurisdiction over the person of defendants as a special venue statute. June 25, 1948, c. 646, 62 Stat. 936.

Act July 30, 1947, c. 391, 61 Stat. 652, codified and enacted into Positive Law, Title 17 of the United States Code entitled "COPYRIGHTS" and repealed enumerated Sections or parts thereof of the Revised Statutes and Statutes at Large covering provisions codified in such Title A saving clause provided that "Any rights or liability now existing under such repealed Sections or parts thereof shall not be affected by such repeal." U.S.C.A., Title 17, Vol. 1, p. 5.

Title 17, U.S.C.A., Sections 1, 2, 3, 101, 104, 105, and 112, 114, 115, 209, 210. 37 Code Federal Regulations, Sections 201.2, (d) (2) (3), U.S.C.A., Title 17, pp. 326-327.

STATEMENT OF CASE.

1.

This is a matter where it is true that petitioner is the author of the four songs named on the first page of the Court of Appeals opinion Appendix A. Wrote Exhibit 11, October 26, 1939. Wrote Exhibit 26, November 17, 1939. Wrote Exhibit 25, January 28, 1940. Wrote Exhibit 12 January 28, 1942. October 9, 1940, ASCAP and Louis Bernstein acknowledged receipt of Exhibit 26 word for word as it is now. October 9, 1941, Arbie Gibson acknowledged receipt of Exhibit 11 word for word as it is now. Song Hit Guild, Inc., acknowledged receipt of Exhibits 11 and 25, April 22, 1942, the receipt is Exhibit 13. Main Street Songs, Inc., through its attorney admitted that it received Exhibit 25, word for word from your petitioner as it is now.

2.

November 14, 1941, Shapiro, Bernstein & Co., Inc., recorded in the copyright office the purported assignment

of copyright Exhibit 58. Recorded in Vol. 471 at page 193. It is invalid because it has no copyright registration number on it the Court of Appeals looked it over and the court could not find any copyright registration number on it. December through from 29 to 31, 1941, Shapiro, Bernstein & Co., Inc., made two applications for copyrights without having any author's name on the application or the certificate of copyright as shown on Exhibits 56, 57, 52, 53, claim that Paul Wierick, composer for hire, made an arrangement. The registration being Class E Publication No. 100648. There is an X marked before this certificate No. 100648 on the certified court order Exhibit 36 showing that there is no material on deposit in the copyright office for copyright registration No. 100648. The application and certificate for Class E publication No. 101174 Exhibits 57 and 53 claims Dick Howard, Bob Ellsworth and Russ Morgan to be the authors. After all this jiggling of copyrights in the copyright office for two days, claiming two publications and two rearrangements of copyrights in three days time and respondents had nothing more than what they acknowledged receipt of from your petitioner. See Appendix C. The Court of Appeals looked at the exhibits described above and was told by petitioner that they were invalid. Compare the date on the above false copyrights with the Court of Appeals' statement on the second page of its opinion saying "on and before that date the same songs had been published and copyrighted."

3.

November 4, 1942, Edwin H. Morris & Co., Inc., copyrighted Exhibit 11, claiming on the face of the song "Honey I'm In Love With You," that it is original words and music by Curt Massey and Arbie Gibson. Class E. Pub. No. 108976. Exhibit 66. I. Edward Vance, filed mail fraud

charges with the Post Office Department against Edwin H. Morris & Co., Inc., January 12, 1944. Edwin H. Morris & Co., Inc., pretended to be making a rearrangement copyright on the melody and that the rearrangement was made by Joseph P. Elsnic, employee for hire. The melody or music on this copyright is the same, compare Exhibit 11 with Exhibit 12; claim on the face of Exhibit 12 to be the 1942 copyright, the original words and music by Curt Massey and Arbie Gibson. Made no claim of rearrangement on the lyric. All of this was done in order to have a different lyric in the copyright office to avoid mail fraud prosecution. The certificate Class E. Pub. No. 119562, Exhibit 67, made no rearrangement and claim no copyright on the lyric. The Court of Appeals had these Exhibits in its hand looked at them and was told by petitioner that they were invalid. See Appendix C.

4.

Main Street Songs, Inc., claims on the song "SOMEDAY YOU'LL WANT ME TO WANT YOU" that it copyrighted it in 1940 and published it in 1940. Exhibit 61 shows that the song "SOMEDAY" was copyrighted by James S. Hodges and that Passantino Printing Co., Inc., published it. December 30, 1944, Main Street Songs, Inc., made a false claim of rearrangement copyright, claiming Jimmie Hodges came in with new matter. This false claim of rearrangement was made three years before Main Street Songs, Inc., recorded a purported assignment of copyright Exhibit 59. If the copyright is claimed before the assignment is recorded the copyright would be invalid, the assignment would be void. See Section 30, Title 17, U.S.C.A., p. 155, assignment must be recorded within three months.

5.

The Court of Appeals' opinion is like the District Courts' order, both are mere copies of defendant's false pleadings base on statement made before the two courts, without any evidence to support such false statements. Such statements are made after the purported authors and publishers refuse to offer any defense in their own behalf. The purported authors and publishers are doing business in the Western District of Missouri under the name of ASCAP and BMI, they are licensed to do business in the State of Missouri. ASCAP was served in St. Louis, its publisher members and author members were served wherever they could be found; jurisdiction of the person of defendants is set out in the record, pp. 1, 2, 14, 15, 16, 17, 18, 19, 60, 70, 71, 78. Each and all defendants are indispensable parties. They are scattered all over the United States. If any defendant does not want to appear before the Western District of Missouri and plead he can appear before the District where he is pursuant to Section 112, Title 17, U.S.C.A., as explained in *Lederer v. Rankin*, C.C. Ohio, 90 Fed. 449. Set out in 48 C.J.S., Title "Purpose of Statute, Sec. 132, note 12, Pages 245 and 246. As in U.S. l.c. *Pear & Co. v. Fox Film Corporation*, C.C.A. N.Y., 83 F.2d 196.

Numerous other cases as cited on pages 246 of 18 C.J.S., notes 13-14-15-16.

6.

The Court of Appeals has displayed a wide range of ignorance of the provisions and purpose of the copyright Act in its opinion. The reason being that the Federal Rules of Civil Procedure has rendered the Court of Appeals inefficient, my authority on that statement is 25

C.J.S. The Court of Appeals like the District Court has done nothing. The Court of Appeals stated to defendants' attorney that "Judge Smith did not say specifically what he did dismiss the complaint for." The Court of Appeals affirmed whatever the District Court said there could be, the reason being due to the Court of Appeals' bias and prejudice against the petitioner because he is a layman and for no other reason the court is trying to make a heresy out of the law. The necessary requirements of a complaint pleading under the copyright law are: State the statutes invoking the court's jurisdiction; state the issues, state acts creating the issues; state the reasons why defendant's copyrights are invalid and give the copyright registration numbers, and file the Exhibits in court and state that the plaintiff is a citizen of the United States and that his copyrights were acquired in compliance with the copyright law. See complaint R. pp. 1, 2, 3, 4, 5, 6, 7, 8.

7.

The Court of Appeals knows that petitioner's copyrights are valid; it asked to see them and the court looked at them. The Court of Appeals looked at Exhibit 58 and understood that it had no copyright registration number on it. Looked at Exhibits 11 and 12 and understood that both claim on their face, 1942 copyright contrary to Exhibit 67, a certificate of copyright, and understood that there never has been a copyright registration on the lyrics of Exhibit 12. Looked at Exhibit 25 and understood that a false claim of rearrangement copyright was registered before the purported assignment was recorded three years later.

8.

The Court of Appeals has shown by its opinion that it does not know what the requirements in a copyright com-

plaint are when pleading under the copyright law. The Court of Appeals copied the following false statements: That "this is one of eighteen various proceedings filed by plaintiff." "On and before that date the same songs had been published and copyrighted." "The original copyrights have also been expanded from time to time." Judge Sugarman did not make the statements credited to him on page 3 of Court of Appeals' opinion. The Federal Rules Decisions in the foot note on page 4 of the Court of Appeals' opinion pertains to *Vance* v. *U.S.A. et al.*, Civil No. 58-232. This claim remained open on the trial calendar 1951 until December 5, 1955; dismissed under Rule 16, Federal Rules of Civil Procedure, without cost or prejudice by Judge Knox, S.D.C., N.Y. See Exhibit 90. Your petitioner defaulted due to fraud before the court by the respondents.

Vance v. *ASCAP*, Civil No. 77235, dismissed June 18, 1954, under Rule 16 of Federal Rules of Civil Procedure, because I failed to receive proper notice from the court. See Exhibits 90 and 91.

This Court can readily see that the Court of Appeals relied upon false statements all the way through its opinion. There have been no oral arguments as to the merits of the complaint. Only two dismissals under Rule 8 F. They were not justified.

9.

Rule 10 (c) of Federal Rules of Civil Procedure states that Exhibits filed in the court are a part of the complaint for all purposes. Section 1733, Title 28, U.S.C.A., authorizes any Federal document to be used in court as evidence. Section 210, Title 17, U.S.C.A., provides that catalog entries be *prima facie* evidence. Section 209, Title 17, U.S.C.A., provides that the certificate of copyright be the

subject of litigation. *Prima facie* evidence of facts or falsity stated therein.

10.

Rule 7 (c) of Federal Rules of Civil Procedure abolishes pleading prior pleadings and pleading insufficiency of pleading. The Rules provide other ways of making discoveries. The purported authors and publishers who are joint owners of the purported copyrights have not offered any defense to their copyrights that is because I have valid copyrights and I have standing open complaints with the Post Office Department who advises me that the statute of limitation was tolled when I first filed my complaint in 1942.

When I first brought suit for two of the songs in 1944, the Post Office Department makes this statement because it does not have jurisdiction over copyright. Respondents claimed valid copyrights to the Post Office Department but never have offered any defense or made any plea to valid copyrights in court. I have standing open complaints with the Federal Trade Commission's Bureau of Legal Investigation, 5382, *Vance* v. *ASCAP et al.* Mr. Barns, head of the Monopoly Division of the Department of Justice, made an investigation of my case in Kansas City, for one week and notified me that he understood that I had a motion before the U.S.D. Court in St. Louis, to have the copyrights declared invalid. Then he would decide what he would do. Judge Harper said he did not know much about copyrights, he thought they just pirate your songs and copyright them. Dismissed on the grounds that my case stems from common law piracy. That was case, *Vance* v. *ASCAP et al.*, D.C.E.D. Mo., No. 10261 (3).

The Department of Justice maintains four files on my case, Criminal, Civil Fraud, Copyright and Monopoly Divi-

sion. The District attorney has no jurisdiction over copyrights.

11.

The Federal Bureau of Investigation made a report to the Attorney General and the F.B.I. said that they understood that each time the copyrights were used the violations were renewed but they have no jurisdiction over copyrights. The legal staff of Congress Judiciary Committee made an investigation by asking the attorney at the Copyright office if new material could be filed back under old copyright registration numbers as I alleged and he was advised that it could be done and the attorney at the copyright office explained how it could be done. The lawyer representing the legal staff of the judiciary committee said he could not present my complaint on the floor of Congress at that time because I had a case pending in the Federal Court in St. Louis at that time. However he said if and after I had run my course in the courts, come back to him and he would present my complaint of the law to Congress and argue it on the floor of the HOUSE. The United States commissioners in New York City and Kansas City, both refused to let me make a sworn statement before them on the grounds that they do not know anything about copyrights. March 15, 1958, I, Edward Vance, made a sworn statement before the chief clerk of the United States District Court, titled *United States* v. *ASCAP et al*...under Section 1001, Title 18, U.S.C.A., and mailed it to the Attorney General of the United States. The disposition of the Certificate of unconstitutionality signed by Judge Knox, December 2, 1952, is shown on page 66 of the record, and page 70. Annexed hereto is Appendix E, a copy of letter from James Roosevelt, chairman of Subcommittee No. 5, of Select Committee on Small

Business of the House of Representatives of The United States, dated August 10, 1959. This committee has made a report about the activities of ASCAP and has remained a watchdog over the Department of Justice for more than one year and has caused the New York Court to be opened under the Consent Decree, *U. S.* v. *ASCAP*, Civil No. 1395.

REASONS RELIED UPON FOR THE GRANTING OF A WRIT OF CERTIORARI.

12.

Petitioner was dispossessed of his property without due process of law. Petitioner is being denied equal protection of law as provided for by Sec. 1 of the 14th Amendment of the Constitution of the United States.

13.

Section 3, Title 17, U.S.C.A., is repugnant to the Constitution of the United States. Respondents, the purported authors and publishers, through concert action, used Section 3, Title 17, U.S.C.A., to claim ancient copyright on my four songs as shown on the copyright records, Exhibits 11, 12, 25, 26, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61 62, 63, 64, 65, 66, 67, 83, 84, 85, 86, 87, 88, 89, R. p. 2. Respondents used six decoy authors; used rearrangement application blanks with my entirely new four songs; made four false claims of protection on component parts, making false claims that copyright subsisted on some parts of my four songs; enlarged the scope of copyright, in violation of Section 3, used old copyright registration numbers and filed my entirely new four songs back under those old copyright registration numbers they had used other entirely different songs with and different titles until the old entirely different songs became inactive in their reper-

toire of music and of no more use to them. Violating 37 C.F.R. Violating Sections 1, 2, 3, 101, 105 and 112 of Title 17, U.S.C.A., continuous making false claims of valid copyrights to collect money under false pretense. Respondents have pooled my songs under two industry wide blanket licenses promoted and maintained by ASCAP and BMI, two major licensing national agencies, operating under blanket licenses industry wide, paying each member on their classification of membership, making it impossible for an accounting as provided by the copyright law. See Material on deposit in the copyright office, Exhibits 83, 84, 85, 86, 87, 88.

14.

Publishers members of ASCAP and BMI are incorporated under state laws but do not operate as entities with any capacity under any state law. Instead each publisher member has elected to operate collectively through ASCAP or BMI under color of the copyright law of the United States as a classified member of ASCAP or BMI doing business in the State of Missouri in the same manner these corporations do business in the state of their incorporation.

15.

Section 1, Title 17, U.S.C.A., provides exclusive rights to any person entitled thereto, upon complying with the provisions of this title. They can do all the things a valid copyright provides for. Failure to comply with the provisions of this title is fatal.

All rights are forfeited under Section 1, anytime within 28 years. A suit brought under Section 1 is not a common law claim. It is a Federal question. No State court can rule on illegal procurement of copyright. It makes no difference whether the party maintaining the suit has

copyright on the same material or not; or it makes no difference whether defendants pirated the songs or how they acquired the material. In this instance it was through illegal use of the mails. Nevertheless the gravamen of my complaint is invalid copyrights. See Paragraphs 4, 5, 6 of complaint, R. pp. 2, 3, 4.

A copyright is an exclusive right, the purported authors, publishers and owners were not entitled to copyright and they did not secure any rights and they have no right to continue to do without copyright what a valid copyright provides for. All the respondents named in the caption of this petition are liable, their acts co-ordinate so that they represent each other all over the United States.

16.

The respondents are not entitled to copyrights and they are working a continuous fraud against the United States and the statutes of limitations do not apply. Section 112, Title 17, U.S.C.A., provides injunctions, service and enforcement, anywhere in the United States, where the invalid copyrights are being used to do what a valid copyright provides for, upon complaint filed by any party aggrieved.

Section 115 of Title 17, U.S.C.A., pertains to rights secured under this title. Section 101 provides injunctions against infringement. If one who has a valid copyright waits three years before bringing suit for infringement against that copyright then Sec. 115 would apply. The violation is renewed and a new cause accrues each and every time anyone who is not entitled to copyright uses an invalid copyright to do what a valid copyright provides for. Only a person entitled to copyright can do what respondents are charged with in Paragraphs 4, 5, 6 of complaint, R. pp. 2, 3, 4.

17.

Section 2, Title 17, U.S.C.A., authorizes suit under my unpublished copyright. Section 3, Title 17, U.S.C.A., provides protection on component parts. Which reads in part: "The Copyright upon composite works or periodicals shall give to the proprietor thereof all the rights in respect thereto which he would have if each part were individually copyrighted under this title."

Through abuse of this paragraph in Section 3, respondents used Section 3 as an instrumentality to claim 1937, 1940, 1942 copyrights on four songs that were not in existence until I composed them and respondents do not deny that they received the songs from me. Such overt acts renders Sec. 2, Title 17, U.S.C.A., null, renders petitioner's common law literary property right inadequate. The purported authors and publishers have admitted all facts to be true and well pleaded by pleading under Rule 12 (b) (6) of Federal Rules of Civil Procedure; that only a question of law remains before the court to decide.

18.

The attorney representing the third party defendants who has been retained by ASCAP for twenty years refers to copyright registrations as being piracy claims under common law. See R. p. 22.

The third party defendants knowing I have an equity interest in the copyrights wrongfully taken out by the purported authors and publishers plead innocence of infringement but plead for the purported authors and publishers by saying the copyrights were duly registered and the judgment of both courts are based on the third party's pleading which is not based on any known fact.

19.

Section 105 of Title 17, U.S.C.A., bars all false markings on songs and copyrights and all claims on the four songs, all five applications and certificates of copyrights made by respondents after they acknowledged receipt of my four songs are false. The copyright registrations listed in paragraph No. 4 of complaint, R. p. 3, must be declared invalid.

Your petitioner respectfully prays for a writ of certiorari.

Respectfully submitted,

Edward Vance

EDWARD VANCE,

Petitioner.

APPENDIX A.

United States Court of Appeals

FOR THE EIGHTH CIRCUIT.

No. 16,273

Edward Vance, Appellant, v. American Society of Composers, Authors and Publishers (ASCAP), et al, Appellees.	Appeal from the United States District Court for the Western District of Missouri.

October 26, 1959.

Edward Vance, pro se.
Maurice J. O'Sullivan for appellees.

Before WOODROUGH AND MATHES, Circuit Judges and MICKELSON, District Judge.

Edward Vance, appellant herein, who lives in Missouri, claims that he is the author and composer of certain songs titled "Somebody Else is Taking My Place", "The Honey Song ('Honey I'm in Love With You')", "Some Day (You'll Want Me to Want You)", and that he wrote and composed them at different times prior to 1942. On and be-

fore that date the same songs had been published and copyright had been obtained for each, respectively, by one of the three New York publishing companies, Mainstreet Songs, Inc., Edwin H. Morris & Company, Inc., and Shapiro, Bernstein & Company, Inc., named as appellees herein and in their several registrations for copyright, the authorship of the songs was ascribed to persons other than Mr. Vance. The Statutory Certificates of Copyright Registration on the songs claimed by Vance but issued respectively to the three New York publishing companies have remained unrevoked approximately seventeen years and the songs have reached the public in the usual ways as sheet music, rolls, records and broadcasts licensed through the record proprietors of the copyrights. The original copyrights have also been expanded from time to time in favor of the same copyright proprietors to cover arrangements and additional, revised and new words and changes.

Ever since 1944, Mr. Vance has been trying to establish a right to the songs in court and to recover damages for the use that has been made of them under the copyright by others, but all actions he has brought have been dismissed without joinder of issue on the merits and without trial or determination of his claim of authorship. He is not a lawyer and has himself prepared the complaints he has lodged, undertaken to cause issuance and service of process in the actions and made his own oral and briefed arguments to the many judges on whose dockets his cases have appeared. All of the federal district judges who have considered his pleadings and contentions have reached the same conclusions that was expressed by Judge Sugarman in 1953 in *Vance v. American Society of Composers, Authors, and Publishers et al.*, 14 F.R.D. 31:

"Full opportunity has been given plaintiff to set forth his claims, whatever they may be. He has ignored the court's offer to supply, or its advice that he retain competent counsel.

"The time has come when this court must assert its indisposition to be further imposed upon by this plaintiff's refusal to retain or accept competent counsel.

"The motions to dismiss the complaint for failure to comply with F.R. Civ. Rule 8(e), 28 U.S.C., are granted with prejudice and without leave to plead over."

Up until 1958, Mr. Vance always sought to make out a case and obtain recovery as the owner of common law rights in the songs but in an action he brought in that year in the Western District of Missouri he showed that he himself had made registry of the songs during that year and claimed to be the proprietor of copyrights on them as unpublished songs written and composed by him. That case was on Chief Judge Duncan's docket and in June of 1958, Judge Duncan entered an order declaring that "Lack of venue in this Court disposes of the plaintiff's action *" and that case was dismissed in 1958 without joinder of issues.

Mr. Vance brought the present action on January 26, 1959, and it also culminated in the entry of a final order of dismissal by Judge Smith at Kansas City on May 6, 1959, as follows:

"MEMORANDUM AND ORDER

(Filed May 6, 1959)

"Plaintiff has instituted this suit against the defendants above named seeking damages for alleged infringement of plaintiff's copyrights, illegal use of 'illegal copyrights' and other matters

"This is one of eighteen various proceedings filed by plaintiff over a period of some fifteen years, in this Court, in the United States District Court for the Eastern District of Missouri, and in the United States District Court for the Southern District of New York.[1] The last proceeding, so far as our records indicate, was terminated June 11, 1958, by Chief Judge Duncan of this Court in Case No. 11726. Although from time to time various defendants have been named in the cases, certain of them have been named consistently in all of them; and all of them involve substantially the same subject and the same claims. This one involves as an additional element the claim that in February, 1958, plaintiff himself obtained copyright registration of the four songs which form the basis of this action, although his own pleadings and exhibits show that they were copyrighted by others many years ago.

"Without exception these various proceedings have been dismissed. Some have been dismissed for failure to comply with Rule 8, Federal Rules of Civil Procedure, as this one most certainly could be. Some have been dismissed for lack of jurisdiction because of improper venue as to certain of the defendants, as this one well could be. Others have been dismissed on the ground that they fail to state a claim upon which relief may be granted. All of them stem from the same basic charge of alleged use of alleged illegal copyrights.

"But at this time there are before me for consideration various motions to quash returns of service, separate pleas to the venue and motions to dismiss as

1 Those reported are *Vance* v. *ASCAP et al.*, 13 F.R.D. 109 (D.C. S.D. N.Y.), *Vance* v. *United States et al.*, 13 F.R.D. 203 (D.C. S.D. N.Y.), *Vance* v. *ASCAP et al.*, certiorari denied 329 U.S. 809, *Vance* v. *ASCAP et al.*, 14 F.R.D. 30. Unreported *Vance* v. *ASCAP et al.* (D.C. W.D. Mo.) No. 4139, and see *Vance* v. *ASCAP et al.* (D.C. E.D. Mo.) No. 10261 (3) (Footnote added).

to certain named defendants. There is a wealth of material in the way of research, documents, decisions and rulings sufficient to eliminate the necessity for further extensive review of the background of this case. It is apparent that the complaint fails to state a claim upon which relief may be granted; and this Court, therefore, lacks jurisdiction of the subject matter here. For these reasons plaintiff's complaint is dismissed without leave to file an amended complaint.

"It is so Ordered."

Mr. Vance moved to vacate the Order and to "correct mistakes made by the court due to misapprehension of the issues and misappropriation of the law applicable to the issues." His motion was overruled.

He has taken the present appeal to obtain a reversal of the dismissal and as in all former cases he has conducted the proceedings in this Court himself. He made his own oral argument at the bar and in the allotted time failed to clearly apprise the Court of the causes of action intended to be pleaded in his complaint. As shown by the record, Mr. Vance lodged with the clerk of the district court along with his complaint a large number (between 95 and 125) of "exhibits" inserted loosely into two large envelopes declared generally in the complaint to be "made part of the complaint * * * which must be gone into by this court." Particular "exhibits" were not connected with specific allegations of the complaint and it results that the purport and intent of the complaint must be sought in the "exhibits" and is not shown by simple, concise, and direct allegations contained in it. His oral argument was mainly directed to "exhibits" which he drew from the envelopes. It follows that this complaint, like that considered by Judge Sugarman and quoted from above, utterly fails to comply with Rule 8 F.R.C.P. It was attacked on that

ground before Judge Smith and his conclusion that the complaint could certainly be dismissed for failure to comply with that Rule is fully justified.

The complaint lumps all the nineteen defendants together in its charge that they had wrongfully collected six million dollars from plaintiff's songs and it demands judgment against all for a million and one half. However anxious the courts are to decide the claims of every litigant on the merits, no defendant can justly be subject to the maintenance in court of such demands for vast sums of money against him unless the demands are presented in the orderly way the rules require. Neither can the district judges draw pleadings for one litigant to bolster them against attack from the other. The plaintiff's complaint was framed in disregard of lawful requirements and for that reason the dismissal of it must be held to have been without error.

The conclusion of the court that there was improper venue requiring dismissal of the action is also fully sustained. Disregarding the insufficiency of the complaint, we note that it does charge unequivocally that the three New York publishing companies each procured its copyrights on a song claimed by plaintiff "illegally through fraud, deceit, tricks, and misrepresentations against the United States" and have used and are using the copyrights illegally and that "unless the Court declares the * * * illegal copyrights registrations * * * invalid * * * plaintiff will be unable to enforce his copyrights." Plaintiff demands that the copyrights of which the publishers are the purported owners be declared illegal and invalid. He also demands injunction against them.

From these allegations and demands it is apparent that it is the object of plaintiff's suit to have invalidated and to

divest the New York publishers of ownership of the copyrights that they have held as record owners and claimed as their property for many years and that without that relief plaintiff cannot proceed against the other defendants. But the record shows that neither of the New York publishing companies, purported owners of the copyrights, is found within the territorial jurisdiction of the court where this action is brought and no valid service of process has been or can be made upon either of them there. Certainly copyrights are property and the plaintiff did not and could not show how the court could divest the holders of the copyrights here involved without valid service of process on them and according them a day in court. They are manifestly indispensable parties to the plaintiff's action as the unequivocal allegations of the complaint referred to clearly demonstrate and the court did not err in finding improper venue as to them.

In this action Mr. Vance joined two local radio stations, one television broadcasting station, a distributor and two sellers of phonograph records, and local companies which handled some phonograph records of the songs as defendants, but all of them have acted under authority derived from the original statutory copyright proprietors and as plaintiff pleaded in his complaint he could not enforce his copyright which he undertook to register in 1958 against any of them without adjudication of invalidity of the long outstanding copyrights of the New York publishers.

The conclusion of the district court that in the absence from the jurisdiction of the indispensable parties defendant there was "improper venue" and that the court was without jurisdiction of the subject matter was therefore not erroneous.

The appellees also contend in support of the judgment, as they did in the district court, that plaintiff's case

against all defendants is barred by the statute of limitations.

Prior to 1958, the federal copyright law contained no limitation of time within which a civil action could be maintained under it but § 115, Title 17 U.S.C., was amended September 7, 1957 and § 115(b) now contains the provision:

> "Civil Actions.—No civil action shall be maintained under the provisions of this title unless same is commenced within three years after the claim accrued."

Congress deferred operation of the provision one year and its effect evidently has been to establish the bar within the three year period whether the claim accrued before or after the effective date of the amendment. The present action was brought by the plaintiff on January 26, 1959, more than one year after the amendment and many years after the outstanding copyrights of the publishers were taken.

Plaintiff declares in the first paragraph of the complaint that the jurisdiction (of his action) is invoked under the Copyright Title, 17 U.S.C.A. so that the action is a civil action included in the terms of Section 115(b) of Title 17. It is brought, as shown, to correct the wrong claimed to have been done to plaintiff in taking out copyrights in 1937, 1940 and 1942, which he claims was wrongful and illegal. That claim of plaintiff accrued when the wrongs were done and more than three years elapsed before plaintiff brought his action here to abate the wrong.

Plaintiff has argued (as we understand) that his action is not barred because his rights as author of the songs endure 56 years and each use of a song unauthorized by him gives rise to a new cause of action in his favor. But the federal copyright law confers exclusive rights in respect to songs on which copyright has been obtained by

persons entitled thereto and to the extent of the provisions of the Act the author loses his right of control over his work. It is not presumed that copyrights duly registered have been fraudulently obtained; on the contrary, the statute (§ 209, Title 17) makes the certificate of the Register of Copyrights prima facie evidence in any court of the facts stated therein. Before the 1957 amendment of § 115, the maximum term in which the author of a song could sue for its infringement was governed by the limitation prescribed for the class to which the infringement action belonged by the law of the state where the action was brought. *Brady* v. *Daly*, 175 U.S. 148; *McCaleb* v. *Fox Film Corp.*, 299 Fed. 48; *Pathe Exchange, Inc.* v. *Dalke*, 49 F.2d 161. But the 1957 amendment to § 115 imposes its limitation of three years in all civil actions brought under Title 17.

The publishing of the songs and obtaining copyrights on them by virtue of the publishing if wrongfully done presents a different situation. The record of copyright stands in the way as an accomplished wrong that prevents plaintiff's use of his songs. There is no claim that plaintiff was not fully cognizant of the wrong when it was committed, nor any reason suggested why he failed to bring his action to annul it within the statutory time.

We note, however, that none of the district judges who have considered and dismissed the actions brought by Mr. Vance have seen fit to adjudicate in any of them upon the merits and there has been no determination that any of them was barred by limitation. In that state of the record it appears inappropriate for this Court to make decision to that effect in the first instance on the appeal. We do not find precedents as yet of the application of the new limitation, Section 115(b) Title 17, by any Circuit Court.

All of the judges who have considered and dismissed the cases brought by Mr. Vance in respect to the songs he claims have found that the complaints he composes and presents without the aid of counsel fail to meet the requirements of Rule 8 F.R.C.P. and that no jurisdiction was obtained. In none has he obtained valid service of indispensable parties. Judge Smith has so concluded in the present action.

The appellees complain that Mr. Vance has harassed them with his futile actions during the years and urge this Court to make an end of it but it is consistent with the record that they could readily find means to appear and have his claims adjudicated on the merits. We conclude the judgment appealed from is without error. It is

Affirmed

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

APPENDIX B.

(Judgment.)

United States Court of Appeals

FOR THE EIGHTH CIRCUIT.

No. 16273 - - - - September Term, 1959.
Monday, October 26, 1959.
Edward Vance, Appellant,

vs.

American Society of Composers, Authors and Publishers (ASCAP); Broadcast Music, Inc. (BMI); Shapiro, Bernstein & Co., Inc.; Edwin H. Morris & Co., Inc.; Duchess Music Corporation; Main Street Sons, Inc.; Jenkins Music Company; Decca Distributing Corporation; Decca Records, Inc.; Chancellor Records, Inc.; KMBC Radio and Television Broadcasting Station; WHB Radio Broadcasting Station; Katz Drug Company; Dick Howard; Bob Ellsworth; Russ Morgan; Curt Massey; Arbie Gibson; and Jimmie Hodges.

Appeal from the United States District Court for the Western District of Missouri.

This cause came on to be heard on the record from the United States District Court for the Western District of Missouri, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed.

October 26, 1959.

APPENDIX C.

Description of Copyrights.

Exhibit No. 50, Certificate of Copyright Class E Unpublished No. 154423 Copyrighted in the name of Charles Friedman it is a waltz claim words and music which consist of two lines titled, "Somebody Else Is Taking My Place", October 2, 1937.

Exhibit No. 54, Application of Copyright by Charles Friedman. It is a waltz Class E Unpublished No. 153323. Claim Words and Music two lines, October 2, 1937.

Exhibit No. 55, Application of Copyright Class E Publication No. 65136 in the name of Back Bay Music Co., titled, "Somebody Else" (Is Taking My Place). Words and music by Bob Ellsworth and Dick Howard. Charles Friedman's name is not on the application. November 6, 1937.

Exhibit No. 51, Certificate of Copyright by Back Bay Music Company. Words and music by Dick Howard and Bob Ellsworth. Piano Score by Charles Friedman. November 6, 1937. Class E Publication No. 65136.

Exhibit No. 58, Purported Assignment of Copyright, signed by George J. Reardon, supposed to be representing Back Bay Music Co., a defunct organization at that time Recorded in Vol. 471 at page 193. This is not an assignment of Copyright. It does not have the above copyright registration on it. Class E Publication No. 65136 taken out by Back Bay Music Company, November 6, 1937. It does not show that the authors of the 1937 copyright have assigned their rights of copyright, the authors are joint

owners with the publishers. See R. p. 22, where respondents claim Russ Morgan's name is on the 1937 Class E Publication No. 65136, where respondents say it is certified. I had it certified. October 2, 1951, is the date of certification. I had the Applications and Certificates listed herein certified December 3, 1951, it shows on the face of the Exhibits.

Exhibit No. 52, a purported rearrangement in the name of Shapiro, Bernstein & Co., Inc. Arrangement by Paul Weirick, composer for hire claim arrangement for orchestra with words. Dick Howard, Bob Ellsworth and Russ Morgan's names are on this Certificate. Class E Publication Copyrighted December 31, 1941, No. 100648. Charles Friedman's name is not on it. No material on deposit in the copyright office for certificate Class E Publication No. 100648 on the certified court order Exhibit 36, is an x marked before this No. 100648 to show that there is no material on deposit.

Exhibit No. 53, Certificate of Copyright purported rearrangement copyright Class E Publication No. 101174. Copyrighted in the name of Shapiro, Bernstein & Co., Inc., December 30, 1941. Fox Trot titled "Somebody Else Is Taking My Place".

Exhibit No. 56, Application of copyright titled "Somebody Else" (Is Taking My Place) Class E Publication 100648. No authors' names on it published by Shapiro, Bernstein & Co., Inc., claim Paul Weirick Author of new matter which was arrangement for orchestra. Fox Trot Paul Weirick is author for hire by Shapiro, Bernstein & Co., Inc. He set the mechanical notes to my song. That is nothing constructive or creative?

Exhibit No. 57, Application of Copyright Class E Publication No. 101174 in the name of Shapiro, Bernstein & Co.,

Inc. No authors' names on this application claim revision of words additional words and change in music.

Exhibit No. 66. Certificate of Copyright Claim Curt Massey and Arbie Gibson authors of words and music Titled "The Honey Song" (Honey I'm In Love With You Published by Edwin H. Morris & Co., Inc. Copyrighted November 4, 1942. Published October 30, 1942. Claim that it is the original words and music.

Exhibit No. 67. Certificate of Copyright in the name of Edwin H. Morris & Co., Inc. Copyrighted January 12, 1944. claim arrangement of music by Joseph P. Elsnic Employee for hire claim arrangement for piano accordion. The music is the same as the 1942 copyright described above. the lyric is different but on the face of Exhibit 12 claim that it is the 1942 copyright that it is the original words and music by Curt Massey and Arbie Gibson. Made no claim of lyric rearrangement. Instead of putting the 1944 date which is on Exhibit 67. Put 1942 date so as to have a different lyric on record in the copyright office. to avoid mail fraud charges. No copyright was secured. No such person as Arbie Gibson.

Exhibit No. 60. Application of Copyright March 6 1929. Unpublished Class E No. 4312 in the name of Joseph Reichman and James S. Hodges. Titled "SOMEDAY".

Exhibit No. 63. Certificate of Copyright March 6, 1929 Class E. Unpublished No. 4312 in the names of James S. Hodges and Joseph Reichman. Titled "SOME DAY".

Exhibit No. 61. Application of Copyright September 10, 1940. by Jimmie Hodges published by Passantino Printing Co., Inc., on the face of Exhibit 25. claim that Main Street Songs published it in 1940. Joseph Reichman's Name is not on the 1940 copyright. Titled "SOMEDAY

YOU'LL WANT ME" (TO WANT you). Class E Publication No. 87510.

Exhibit No. 64. Certificate of Copyright September 10, 1940, by Jimmie Hodges. Joseph Reichman's name is not on this certificate Class E. Publication No. 87510. Titled "SOMEDAY YOU'LL WANT ME" (TO WANT YOU).

Exhibit No. 62. Application of Copyright in the name of Main Street Songs, Inc., Copyrighted December 30, 1944. Published December 29, 1944, on the song Exhibit 25. Main Street Songs, Inc., claims 1940 publication contrary to Exhibit 65, and Exhibit 64. Class E. Publication No. 128617, claim rearrangement copyright that new matter by Jimmie Hodges.

Exhibit No. 65. Certificate of copyright December 30, 1944, published by Main Street Songs, Inc. Class E. Publication No. 128617, claim Jimmie Hodges came in with new matter. Jimmie Hodges had already assigned his song to Main Street Songs, Inc., as shown on Exhibit No. 59. Main Street Songs, Inc., offered me an outside settlement saying it received the song as it is now from me. Main Street Songs lawyer made the offer for fear Main Street Songs, Inc., would become involved in a conspiracy I had charged ASCAP and its publisher members with. This is a purported rearrangement copyright.

Exhibit No. 59, a purported assignment of copyright supposed to have been made September 8, 1944, but not recorded in the copyright office until September 28, 1947, three years later. It's unlike the purported assignment of copyright made by Back Bay Music Co., Exhibit 58, this purported assignment does have the copyright registration number on it Class E, Publication No. 87510, Recorded in Vol. 644, Page 96. Jimmie Hodges demanded a recording of the assignment so he would not be held responsible for what Main Street Songs, Inc., did when it made a false rearrangement copyright in 1944.

APPENDIX D.

Statutes Involved Set Out.

1.

Title 28, U.S.C.A., Sec. 1338 (a), p. 65

(a) The District courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, copyrights and trade marks. Such jurisdiction shall be exclusive of the courts of the states in patent and copyright cases (R. pp. 1, 2, 14, 15, 60, 70, 71).

2.

Title 28, U.S.C.A., Sec. 1400 (a), p. 382

(a) Civil actions, suits, or proceedings arising under any Act of Congress relating to copyrights may be instituted in the district in which the defendant or his agent resides or may be found (R. pp. 1, 2, 14, 15, 60, 70, 71).

3.

Title 17, U.S.C.A., Sec. 112, p. 290. Injunctions: Service and Enforcement

Any court mentioned in section 1338 of Title 28 or judge thereof shall have power, upon complaint filed by any party aggrieved, to grant injunctions to prevent and restrain the violation of any right secured by this title, according to the course and principles of courts of equity, on such terms as said court or judge may deem reasonable. Any injunction that may be granted restraining and enjoining the doing of anything forbidden by this title may be served on the parties against whom such injunction

may be granted anywhere in the United States, and shall be operative throughout the United States and be enforceable by proceedings in contempt or otherwise by any other court or judge possessing jurisdiction of the defendants (July 30, 1947, c. 391, Sec. 1, 61 Stat. 652; Oct. 31, 1951, c. 655, Sec. 16(c), 65 Stat. 716) (R. pp. 1, 2, 14, 15, 16, 60, 70, 71).

4

U.S.C.A., Title 17, Sec. 115 (a) and (b), p. 54

(a) Criminal proceedings.—No criminal proceedings shall be maintained under the provisions of this title unless the same is commenced within three years after the cause of action arose.

(b) Civil actions.—No civil action shall be maintained under the provisions of this title unless the same is commenced within three years after the claim accrued. (As amended Sept. 7, 1957, Pub. L. 85-313, Sec. 1, 71 Stat. 633.)

5

U.S.C.A., Title 17, Sec. 105, p. 284

Any person who, with fraudulent intent, shall insert or impress any notice of copyright required by this title, or words of the same purport, in or upon any uncopyrighted article, or with fraudulent intent shall remove or alter the copyright notice upon any article duly copyrighted shall be guilty of a misdemeanor, punishable by a fine of not less than $100 and not more than $1,000. Any person who shall knowingly issue or sell any article bearing a notice of United States copyright which has not been copyrighted in this country, or who shall knowingly import any article bearing such notice or words of

the same purport, which has not been copyrighted in this country, shall be liable to a fine of $100. July 30, 1947, c. 391, Sec. 1, 61 Stat. 652.

6.

U.S.C.A., Title 17, Sec. 101, Infringement, pp. 157, 158, 159:

If any person shall infringe the copyright in any work protected under the copyright laws of the United States such person shall be liable:

(a) Injunctions—To an injunction restraining such infringement;

(b) Damages and profits: Amount; other remedies. As stated in Paragraphs (b) (c) (d) (e) too numerous to include in this petition.

7.

U.S.C.A., Title 17, Sec. 3, p. 47:

Sec. 3. The copyright provided by this title shall protect all the copyrightable component parts of the work copyrighted, and all matter therein in which copyright is already subsisting, but without extending the duration or scope or such copyright. The copyright upon composite works or periodicals shall give to the proprietor thereof all the rights in respect thereto which he would have if each part were individually copyrighted under this title. July 30, 1947, c. 391, Sec. 1, 61 Stat. 652; Oct. 31, 1951, c. 655, Sec. 16 (a), 65 Stat. 716.

8.

U.S.C.A., Title 17, Sec. 2, p. 28, Rights of Author or Proprietor of unpublished works:

Nothing in this title shall be construed to annul or limit the right of the author or proprietor of an unpublished work, at common law or in equity to prevent the copying, publication, or use of such unpublished work without his consent, and to obtain damages therefor. July 30, 1947, c. 391, Sec. 1, 61 Stat. 652.

9.

U.S.C.A., Title 17, Sec. 1, p. 5, Exclusive Rights as to Copyrighted Works:

Any person entitled thereto, upon complying with the provisions of this title, shall have the exclusive right:

(a) To print, reprint, publish, copy, and vend the copyrighted work; All other exclusive rights included from Paragraph (a) to (e) included, it being too long to print with this petition.

U.S.C.A., 37 Code Federal Regulations, Section 201.2(d)(2)(3).

APPENDIX E.

SELECT COMMITTEE ON SMALL BUSINESS

OF THE

HOUSE OF REPRESENTATIVES OF THE UNITED STATES

EIGHTY-SIXTH CONGRESS

WASHINGTON 25, D.C.

Wright Patman, Tex., Chairman
Joe L. Evins, Tenn.
Abraham J. Multer, N. Y.
Sidney R. Yates, Ill.
Tom Steed, Okla.
James Roosevelt, Calif.
Charles H. Brown, Mo.
William M. McCulloch, Ohio
Arch A. Moore, Jr., W. Va.
William H. Avery, Kans.
H. Allen Smith, Calif.
Howard W. Robison, N. Y.
Edward J. Derwinski, Ill.

Committee Room:
129 House Office Building
Capitol 4-3121, Ext. 5827
Bryan H. Jacques
Staff Director
Everette Mac Intyre
General Counsel
Mrs. Marie M. Stewart
Clerk

August 10, 1959

Mr. Edward Vance
North River & Kentucky
Independence, Missouri

Dear Mr. Vance:

Thank you for supplying the Subcommittee with a copy of the record and brief pertaining to your proceeding against ASCAP and others.

The Subcommittee is actively interested in ASCAP at this time and, for that reason, the information which you have supplied is timely as well as interesting. Your interest in forwarding this material to the Subcommittee is greatly appreciated.

Sincerely yours,

s James Roosevelt
James Roosevelt
Chairman
Subcommittee No. 5

ILE COPY

Office-Supreme Court, U.S.
FILED
DEC 28 1959
JAMES R. BROWNING, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959,

No. 558.

EDWARD VANCE,
Petitioner,

vs.

AMERICAN SOCIETY OF COMPOSERS, AUTHORS, AND PUBLISHERS (ASCAP); BROADCAST MUSIC, INC. (BMI); SHAPIRO, BERNSTEIN & CO., INC.; EDWIN H. MORRIS & CO., INC.; DUCHESS MUSIC CORPORATION; MAIN STREET SONGS, INC.; JENKINS MUSIC COMPANY; DECCA DISTRIBUTING CORPORATION; DECCA RECORDS, INC.; CHANCELLOR RECORDS, INC.; KMBC RADIO AND TELEVISION BROADCASTING STATION; WHB RADIO BROADCASTING STATION; and KATZ DRUG COMPANY,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR ABOVE NAMED RESPONDENTS, IN OPPOSITION.

MAURICE J. O'SULLIVAN,
THOMAS M. SULLIVAN,
700 Columbia Bank Building,
921 Walnut Street,
VI 2-3922,
Kansas City 6, Missouri,
Attorneys for Above Named Respondents.

E. L. MENDENHALL, INC., 1108 Oak Street, Kansas City 6, Mo., HArrison 1-3030

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959.

No. 558.

EDWARD VANCE,
Petitioner,

vs.

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (ASCAP); BROADCAST MUSIC, INC. (BMI); SHAPIRO, BERNSTEIN & CO., INC.; EDWIN H. MORRIS & CO., INC.; DUCHESS MUSIC CORPORATION; MAIN STREET SONGS, INC.; JENKINS MUSIC COMPANY; DECCA DISTRIBUTING CORPORATION; DECCA RECORDS, INC.; CHANCELLOR RECORDS, INC.; KMBC RADIO AND TELEVISION BROADCASTING STATION; WHB RADIO BROADCASTING STATION; and KATZ DRUG COMPANY,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR ABOVE NAMED RESPONDENTS, IN OPPOSITION.

STATEMENT.

The opinion below is printed at pages A-1 to A-10 of the Petition and is now reported, 271 F.2d 204. Page

references thereto are hereinafter made as (Pet. A-1; A-2, etc.);

d. The opinion discloses that Mr. Vance is not a lawyer, and

(a) This is the eighteenth of various petitions or amended petitions prosecuted by Mr. Vance in various proceedings during the past fifteen years, in District Courts in the Western and Eastern Districts of Missouri and in the Southern District of New York, all of which, in sundry forms, involved the same songs and substantially the same subject matter and claims, and

(b) That a former petition was denied (1946), in *Vance* v. *ASCAP et al.*, certiorari denied 329 U.S. 809, 91 L. Ed. 691, and

(c) That all of the federal district judges who have heretofore considered his contentions and pleadings reached the same conclusions expressed by Judge Sugarman in 1953, in *Vance* v. *ASCAP*, 14 Fed. R. D. 31; which the opinion quotes as follows:

> "Full opportunity has been given plaintiff to set forth his claims, whatever they may be. He has ignored the court's offer to supply, or its advice that he retain competent counsel.
>
> "The time has come when this court must assert its indisposition to be further imposed upon by this plaintiff's refusal to retain or accept competent counsel.
>
> "The motions to dismiss the complaint for failure to comply with F.R. Civ. Rule 8(e); 28 U.S.C., are granted with prejudice and without leave to plead over," and

(d) The Court of Appeals further said:

> "It follows that this complaint, like that considered by Judge Sugarman and quoted from above, utterly fails to comply with Rule 8 F.R.C.P. It was attacked on that ground before Judge Smith and his conclusion that the complaint could certainly be dismissed for failure to comply with that Rule is fully justified." (A-5, A-6).

2. The Opinion passes to the next point and says:

> "The conclusion of the court that there was improper venue requiring dismissal of the action is also fully sustained."

It points out that the complaint charges that three New York music publishing companies each procured separate copyrights on separate songs claimed by Mr. Vance and alleges that they are using such copyrights illegally and unless the Court declares such copyrights invalid, *plaintiff will be unable to enforce his rights.* Plaintiff demands that the copyrights of the publishers be declared illegal and invalid (A-6). His unverified complaint also demands injunction against them (A. 1, 8).

(a) The opinion further says (A-7):

> "But the record shows that neither of the New York publishing companies, purported owners of the copyrights, is found within the territorial jurisdiction of the court where this action is brought and *no valid service of process has been or can be made upon either of them there.* Certainly copyrights are property and the plaintiff did not and could not show how the court could divest the holders of the copyrights here involved without valid service of process on them and according them a day in court. They are manifestly indispensable parties to the plaintiff's action as the unequivocal allegations of the complaint referred

to clearly demonstrate and the court did not err in finding improper venue as to them."

"The conclusion of the district court that in the absence from the jurisdiction of the indispensable parties defendant there was 'improper venue' and that the court was without jurisdiction of the subject matter was therefore not erroneous." (Emphasis supplied).

3. The Court of Appeals further found that Mr. Vance's complaint invoked the Copyright Act. Title 17, U.S.C.A., and that the action is a civil action included under Section 115 (b) of Title 17, which reads:

"Civil Actions—No civil action *shall be maintained* under the provisions of the title unless same is commenced within three years after the claim accrued." (Italics supplied).

(a) Section 115 of Title 17, was amended September 7, 1957, but its operation was deferred one year, to September 7, 1958, because its three year limitation period by its terms applied to all actions, whether or not they were filed or accrued before or after the effective date of the Section.

(b) The Court says that plaintiff's action

"is brought, as shown, to correct the wrong claimed to have been done to plaintiff on taking out copyrights in 1937, 1940 and 1942, which he claims was wrongful and illegal. That claim of plaintiff *accrued when the wrongs were done* and more than three years elapsed before plaintiff brought his action here to abate the wrong." (Pet. A-8) (Emphasis supplied).

(c) The Court, on page A-10, further points out that none of the district judges made any express determina-

tion on the merits, that Vance's action was barred by limitation. In that state of the record, it was deemed inappropriate to make decision to that effect for the first time on appeal. It is mentioned that no precedents by a Circuit Court had been found on the new Section 115.

(d) The comparison between the new Section 115 and the facts stated, place the ultimate question in such sharp focus that it is obvious that the present action and any subsequent actions are inevitably barred by the limitation provisions of Section 115.

4. The dismissal of the complaint by the District Court was affirmed on two grounds: (a) that it failed to comply with Rule 8, F.R.C.P., and (b) that there was improper venue of three indispensable parties, upon whom no valid process had been or could be served within the territorial jurisdiction of the District Court. There was a virtual ruling that the plaintiff's claims growing out of alleged matters in 1937, 1940 and 1942 are also fully barred by the three year limitation provisions of Title 15, Section 115 (b), U.S.C.A.

ARGUMENT IN OPPOSITION.

Mr. Vance concludes his petition with the statement that the copyright registrations listed in Paragraph 4 of his complaint must be declared invalid.

The Court below pointed out that no valid service of process was obtained (and none could be obtained) on the registered statutory proprietors of such copyrights, which are New York corporations, not doing business in Missouri. They are indispensable parties, to authorize any relief.

If Mr. Vance insists upon a formal adjudication that his claims are also barred by limitation, he may readily

obtain it by suits in New York against such New York music publishers, instead of continuing his Fabian policy of long distance repeated, futile attacks upon them from Missouri. The District Court may well have included the bar of limitations as an additional reason for dismissing Mr. Vance's complaint, but was not required to do so.

Mr. Vance's "Questions Presented" and "Reasons for the Writ" have been carefully considered. No substantial or meritorious questions have been found, which require comment.

CONCLUSION.

The case presents no questions warranting review by this Court. The petition for a writ of certiorari should be denied.

Respectfully submitted.

MAURICE J. O'SULLIVAN,
THOMAS M. SULLIVAN,
700 Columbia Bank Building
921 Walnut Street,
Kansas City 6, Missouri,
Attorneys for Above Named Respondents.